



June 9, 2006

VIA ECFS

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: **Notice of Written *Ex Parte*: WC Docket 05-261 In the Matter of Fones4All Corporation's Petition for Expedited Forbearance Under 47 U.S.C. § 160 (c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service**

Dear Ms. Dortch:

Fones4All Corporation ("Fones4All") submits this *ex parte* letter in response to the May 30, 2006 letter filed by Verizon in this docket. In its May 30 letter Verizon makes a number of incorrect statements of law and fact regarding the Fones4All Petition ("Petition"). Indeed, in its May 30 letter Verizon repeats the same arguments it made in its comments opposing the Petition.<sup>1</sup> Verizon's arguments are as incorrect today as they were seven months ago. In addition, Verizon also incorrectly attempts to conjoin, perhaps for the sake of administrative convenience, the issues raised in the Fones4All Petition with those raised in the XO Petition,<sup>2</sup> which is also currently pending before the Commission. However, while the Fones4All Petition does seek Section 10 forbearance from a rule promulgated by the Commission in the *TRRO* proceeding,<sup>3</sup> that is where any alleged similarity to the XO Petition begins and ends.<sup>4</sup> The

<sup>1</sup> See Opposition of Verizon, WC Docket 05-261 at 5-6 (Oct. 14, 2005).

<sup>2</sup> See Petition for Forbearance Under 47 U.S.C. § 160 (c) from Application of Unbundling Rules that Limit Competitive Alternatives, WC Docket No. 05-170

<sup>3</sup> See Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, 2642 n. 528 (2005), petitions for review pending ("*TRRO*").

<sup>4</sup> In yesterday's Order inexplicably extending the one year deadline in this proceeding, the Bureau also cites the alleged similarity between the issues raised in the XO Petition and issues raised in the Fones4All Petition. See Order, *In the Matter of Fones4All Corporation's Petition for Expedited Forbearance Under 47 U.S.C. § 160 (c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, DA 06-1240 (June 8, 2006). However, the only similarities between the two are that 1) they are both seeking forbearance under Section 160(c) and Section 1.53 of the Rules, and 2) the rule from which forbearance is sought

Section 10 analysis, and in particular public interest prong of the analysis, is completely different for the Fones4All Petition than the analysis the Commission will be required to conduct in addressing the XO Petition. The record in this proceeding clearly demonstrates that the Section 10 forbearance criteria are met with respect to the Fones4All Petition, and accordingly the Commission must grant it.

First, Verizon argues that the 1996 Act does not create any “default unbundling obligation” with respect to unbundled local switching. Verizon is obviously incorrect, as a cursory reading of Section 271 of the Act reveals. Section 271(c)(2)(B)(vi) of the Act undeniably creates an on-going obligation that BOCs provide “local switching unbundled from transport, local loop transmission, or other services.”<sup>5</sup> The Commission clearly recognized and affirmatively acknowledged this fact when in the *TRRO* the Commission specifically retained the definitions of local circuit switching, operator services, and directory assistance, and also held that the availability of shared transport, signaling, and call-related databases “continue to rise or fall with the availability of unbundled local circuit switching.”<sup>6</sup> Perhaps the Commission was anticipating the day when a BOC will seek forbearance from the obligation to provide any Section 271 elements. Nonetheless, it is clear that the a “default obligation” to provide unbundled local switching exists. However, under Verizon’s line of reasoning—that there is no default obligation to provide access to unbundled local switching—there would have been no reason whatsoever for the Commission to specifically maintain the definitions of elements that competitors have used “exclusively” in combination with LEC loops and shared transport called unbundled network element platform.<sup>7</sup> Nonetheless, Verizon has acknowledged in other proceedings before the Commission, as it obviously must, that it has a default obligation under Section 271 to provide Section 271 elements, including unbundled local switching.<sup>8</sup>

Verizon’s second principal argument against the grant of the Petition is that the Commission may not exercise its Section 10 forbearance authority here because the rule from which Fones4All seeks forbearance is not “properly characterized as [a limit] on an otherwise applicable finding that impairment exists and unbundling should be required.”<sup>9</sup> That is, Verizon argues the Commission may not, in exercising its Section 10 forbearance authority, “substitute

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was promulgated in the *TRRO* proceeding. Furthermore, Fones4All questions the legality of the Bureau’s June 8 Order. As Fones4All indicated in its May 18 filing in this docket, the Wireline Competition Bureau acting on delegated authority, does not have the authority to *sua sponte* grant itself, on its own motion, a 90 day extension of the deadline to act on the Petition. Rather, only *the Commission* may grant the 90 day extension, and then only after making an affirmative finding that it is necessary to meet the requirements of Section 10(a). See Letter from Ross A. Buntrock, Counsel to Fones4All to Marlene Dortch, WC Docket 05-261 (May 18, 2006).

<sup>5</sup> 47 U.S.C. § 271(c)(2)(B)(vi).

<sup>6</sup> *TRRO*, n. 529.

<sup>7</sup> *TRRO*, ¶ 200.

<sup>8</sup> See Comments of Verizon, WC Docket 06-90 at 3 (May 19, 2006).

<sup>9</sup> *Ex Parte* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Dee May, Vice President—Federal Regulatory, Verizon, WC Docket Nos. 05-170 and 05-261 at 2 (May 30, 2006) (“Verizon Ex Parte”); Verizon Opposition at 5-6.

for required findings under the explicit standard Congress set forth in section 251(d)(2).”<sup>10</sup> Verizon’s argument is not only contrary to the Commission’s forbearance jurisprudence, but it is also contrary to Verizon’s own previous advocacy on the issue of the interplay between Section 251 and Section 10 in the *Qwest Omaha Forbearance Order*.

The Petition, contrary to Verizon’s representation, does not ask the Commission to create a new unbundling obligation, nor does it in any way ask the Commission to revisit its impairment finding regarding unbundled local switching. Moreover, Verizon’s argument that the Commission’s forbearance authority may not be exercised with respect rules promulgated pursuant to the Commission’s obligation to conduct Section 251(d)(2) impairment findings was explicitly rejected by the Commission in the recent *Qwest Omaha Forbearance Order*.<sup>11</sup> In the *Qwest Omaha Forbearance Order* the Commission specifically stated that the Commission’s [Section 251(d)(2)] analysis does not bind our forbearance review.”<sup>12</sup> Therefore, the Commission should reject Verizon’s attempt to twist the issue to be resolved in this proceeding into one of whether the *TRRO*’s impairment findings with respect to unbundled local switching need to be revisited. That is not the issue. The issue is whether Section 51.319(d) of the Commission’s regulations meets the criteria of Section 10, and as Verizon has previously argued before this Commission, “Section 10 focuses on how forbearance will affect *end users* of telecommunications services.”<sup>13</sup> Section 10(a) of the Act provides the Commission with the authority to “forbear from applying *any regulation or any provision of this Act...*”<sup>14</sup> Further, as Verizon noted in its Reply Comments on the *Qwest Omaha Forbearance Petition*: “Section 10(a)(2) focuses on consumers by its plain terms: it directs the Commission to ‘forbear from applying any regulation...to a telecommunications carrier if the Commission determines that enforcement of such regulation...is not necessary for the protection of consumers. And the statute requires the Commission, in determining whether forbearance is consistent with the ‘public interest’ under Section 10(a)(3), to consider whether forbearances will promote ‘competitive market conditions.’”<sup>15</sup>

Fones4All has demonstrated that the Petition meets the Section 10 criteria for forbearance. Indeed, the grant Fones4All Petition, like the grant of the TracFone petition in the *TracFone Order*, will enhance competition among providers of telecommunications services to universal service eligible consumers and will promote competitive market conditions for consumers eligible for universal service support. Accordingly the Commission, as has been amply demonstrated in this docket, should grant the Fones4All Petition.

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<sup>10</sup> *Ex Parte* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Dee May, Vice President—Federal Regulatory, Verizon, WC Docket Nos. 05-170 and 05-261 at 1 (May 30, 2006) (“Verizon *Ex Parte*”); Verizon Opposition at 5-6. .

<sup>11</sup> *See Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Omaha MSA*, Memorandum Opinion and Order, WC Docket 04-223, FCC 05-170 (2005) (“*Qwest Omaha Forbearance Order*”).

<sup>12</sup> *Qwest Omaha Forbearance Order* at ¶ 63.

<sup>13</sup> Reply Comments of Verizon WC Docket 04-223 at 5 (Sept. 23, 2004) (emphasis in original) (“*VZ Omaha Reply Comments*”).

<sup>14</sup> 47 U.S.C. § 160(a) (emphasis added).

<sup>15</sup> *VZ Omaha Reply Comments* at 6.

Sincerely,

A handwritten signature in cursive script that reads "Ross A. Buntrock".

Ross A. Buntrock

cc:

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